CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 190

MUSCATINE LIGHTING COMPANY, APPELLANT,

vs.

CITY OF MUSCATINE, IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED OCTOBER 24, 1910.

(27,333)

(27,333)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 578.

MUSCATINE LIGHTING COMPANY, APPELLANT,

vs.

CITY OF MUSCATINE, IOWA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

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Rudd & Detweiler (Inc.), Printers, Washington, D. C., February 16, 1920.

a Pleas and Proceedings before Honorable Martin J. Wade, Judge of the District Court of the United States for the Southern District of Iowa, in a Certain Cause Lately Pending in the Davenport Division of said Court, at Davenport, Iowa, Being Numbered 4020, Equity, Wherein Muscatine Lighting Company is Complainant and City of Muscatine, Iowa, et al. are Defendants.

Appearances:

Lane & Waterman, Davenport, Ia.;
E. M. Warner, Muscatine, Ia.;
Wm. Chamberlain, Cedar Rapids, Ia.,
Attorneys for Complainant.
Ralph U. Thompson, Muscatine, Ia.;
Hoffman & Hoffman, Muscatine, Ia.;
H. G. Thompson, Muscatine, Ia.;
Attorneys for Defendants.

Wm. C. McArthur, Clerk, P. O. Des Moines, Ia.

1 *Citation.*

United States of America to City of Muscatine, Iowa; R. S. McNutt, Mayor of said City of Muscatine, Iowa; John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel and Sidney Terry, Members of the Council of said City of Muscatine, Iowa, and Ralph U. Thompson, City Attorney of the City of Muscatine, Iowa, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, D. C. Thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Southern District of Iowa wherein Muscatine Lighting Company is Appellant and you are Appellee, to show cause, if any there be, why the Decree rendered against the said Muscatine Lighting Company as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Martin J. Wade, Judge of the District Court of the United States for the Southern District of Iowa this 20th day of September, A. D. 1919.

MARTIN J. WADE,
Judge of U. S. District Court,
Southern District of Iowa.

Due and legal service of the above Citation is hereby accepted and the receipt of a copy thereof is hereby acknowledged this 20th day of September, A. D. 1919.

RALPH U. THOMPSON,
HERBERT G. THOMPSON AND
HOFFMAN & HOFFMAN,
Attorney- for Appellees.

2 Be it remembered that on the 29th day of July, A. D. 1918, there was filed in the case of Muscatine Lighting Company, Complainant vs. City of Muscatine, Iowa, et al., Defendants, No. 4020 Equity, Davenport Division, a Bill of Complaint which is in words and figures as follows to-wit:

3 In the District Court of the United States in and for the Southern District of Iowa, Davenport Division, October Term, 1918.

#4020, Eq.

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE, IOWA; R. S. MCNUTT, Mayor of Said City of Muscatine, Iowa; John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel and Sidney Terry, Members of the Council of said City of Muscatine, Iowa, and Ralph U. Thompson, City Solicitor of the City of Muscatine, Iowa, Defendants.

Bill of Complaint.

Filed July 29, 1918. Wm. C. McArthur, Clerk, by Lura Parker, Deputy.

To the Honorable Judge of the District Court of the United States in and for the Southern District of Iowa:

The Muscatine Lighting Company, a corporation created, organized and existing under and by virtue of the laws of the State of Iowa for the purpose of engaging in the manufacture and sale of gas in the City of Muscatine, Iowa, and a citizen of the State of Iowa, having its principal office and place of business in the City of Muscatine, Iowa, brings this its Bill of Complaint against the City of Muscatine, Iowa, R. S. McNutt, Mayor of said City of Muscatine, Iowa; John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel and Sidney Terry, members of the Council of said City of Muscatine, Iowa, and Ralph U. Thompson City Solicitor of the City of Muscatine, Iowa, defendants, and thereupon your plaintiff complains and says:

4

Paragraph One.

That the City of Muscatine, Iowa, is a Municipal Corporation organized and acting under the laws of the State of Iowa, and having a Special Charter from the State of Iowa, and all legislative and executive powers of such Municipal Corporation are vested in and exercised by a Council consisting of a Mayor and Eight Aldermen. The defendant, R. S. McNutt is the duly elected, qualified and acting Mayor; the defendants, John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. P. Meyers, John S. Nietzel, Sidney Terry are the duly elected, qualified and acting Aldermen; and the said Mayor and Aldermen, together organized and acting as such constitute the City Council of the City of Muscatine. The defendant, Ralph U. Thompson, is the duly appointed, qualified and acting City Solicitor of the said City, and as such is the lawful head of the Legal Department thereof, and charged with the duty of enforcing the City Ordinances and instituting prosecutions for violations thereof.

Paragraph Two.

This is an action brought by plaintiff against defendants, to enjoin the enforcement of the certain Ordinance of the defendant City passed and approved on the 29th day of April, 1914, fixing certain maximum rates to be charged therein for gas on or after the date of the passage thereof. Said Ordinance, a true copy of which is attached hereto marked Exhibit "A," and by this reference made a part hereof, was duly passed and published by the City Council of said City on or about the 29th day of April, 1914, and has never been modified and repealed.

5 The amount involved in the controversy herein, exclusive of interest and costs exceeds the sum of Three Thousand Dollars ($3,000.00) and the determination of this controversy involves the construction of certain Provisions of the Constitution of the United States, to-wit:

(1) Section Ten, Article One of the Constitution of the United States prohibiting the passage by any State of a law impairing the obligation of a Contract.

(2) The Fifth Amendment to the Constitution of the United States prohibiting the taking of private property for public use without just compensation therefor, and prohibiting the taking of private property without due process of law.

(3) Section One of the Fourteenth Amendment to the Constitution of the United States guaranteeing to all citizens of the United States equal protection of the law, and that portion of Section One of said Amendment which provides that no State shall deprive any person of life, liberty or property without due process of law.

Paragraph Three.

On or about the 17th day of March, 1904, the defendant City acting through its legally constituted authority, did by Ordinance duly and legally passed and adopted by said authorities a true copy of which is hereto attached marked Exhibit "B", and by this reference made a part hereof, grant to Citizens Railway & Light Company, its successors and assigns, a certain franchise or license authorizing and empowering the said Citizens Railway & Light Company, its successors and assigns to own, construct, operate and maintain a gas plant and system for the distribution of gas in the City of Muscatine, Iowa, for a period of Twenty-five years from and after the
6 17th day of March 1904, and under certain terms and conditions specified therein, to use the streets and avenues, alleys and other public places for such purposes. That at the time of the adoption of said franchise ordinance and in accordance with the terms thereof, the Citizens Railway & Light Company for itself, its successors and assigns duly accepted the said ordinance and franchise. That thereafter on or about the Ninth day of July, 1912, the said Citizens Railway & Light Company sold, transferred and assigned unto the plaintiff, Muscatine Lighting Company, all of its property real and personal, and including its said franchise granted by the City of Muscatine aforesaid. That acting under the license and authorization of the said franchise, the Grantee and its successors and assigns this plaintiff, constructed and have continued and now are operating a gas works and plant and distributing system for supplying the City of Muscatine and the inhabitants thereof with gas service both for illuminating and heating purposes, which said plant and distribution system necessitated the expenditure of large sums of money by said Grantee and this Plaintiff. That said franchise ordinance and the written acceptance thereof became a lawful contract in writing by and between the said City of Muscatine, Iowa, and the said Citizens Railway & Light Company, its successors and assigns, and the same now constitutes such a lawful contract by and between the City of Muscatine and your plaintiff as the lawful successor and assignee of said Citizens Railway & Light Company.

That under and by virtue of the terms of this contract and of the laws of the State of Iowa and of the United States at the time of the execution of said contract and at the present time, your plaintiff is entitled to charge such rate for the gas sold by it to its consumers in said City, as will enable it to pay therefrom operating expenses and taxes, and such sum for depreciation in the value of its
7 property used and useful in rendering such service, whether from natural wear or tear, obsolescence or inadequacy occasioned by the growth of said City or from any other natural causes whatsoever connected with the use thereof, and in addition thereto yield to plaintiff a fair and reasonable rate of return upon the fair and reasonable value of such used and useful property employed in rendering such service.

Paragraph Four.

That since the granting and acceptance of said franchise and in reliance thereupon and pursuant to the terms thereof, the said Grantee, Citizens Railway & Light Company, its successors and assigns, have maintained a good and sufficient gas plant within the City of Muscatine, and have built and constructed mains and other necessary apparatus and equipment in and along and upon the streets, avenues, alleys and other public places in said City, and expended and invested large sums of money in so doing. That at the present time the fair and reasonable value of the used and useful property necessarily employed by plaintiff in complying with the terms of its franchise and contract, and in furnishing the gas required by the City of Muscatine and its inhabitants and industries therein, is in excess of Three Hundred Fifty Thousand Dollars ($350,000.00).

Paragraph Five.

That on or about the 29th day of April, 1914, the defendant City, acting through its legally constituted authorities, the Mayor and City Council thereof, passed a certain ordinance a copy of which is hereto attached marked Exhibit "A", and by this reference made a part hereof. That under the said ordinance the defendant City attempted to fix the maximum rate that might be charged by this plaintiff to the inhabitants of the City of Muscatine for gas furnished so that the rate authorized by said ordinance to be
8 charged and now in force by order of the City authorities in the City of Muscatine is the sum of One Dollar and Two cents ($1.02) per thousand cubic feet net.

Plaintiff states that since the passage of said ordinance and upon the demand of the City of Muscatine through its authorized representatives, this plaintiff has been furnishing and charging for gas furnished to the inhabitants and consumers of Muscatine at the rate and price as fixed in said ordinance.

Paragraph Six.

That the actual gross earnings, operating expenses and taxes, exclusive of depreciation and the net earnings of plaintiff in the conduct of its said business of furnishing gas to the City and inhabitants of the City of Muscatine since the fixing of said rates under the ordinance of April 29, 1914, hereinbefore set forth, to-wit, for the calendar years 1914, 1915, 1916 and 1917 at the rates of charge set forth in said ordinance "Exhibit A" (including, however, in the first calendar year the earnings and expenses for the months of January, February and March in 1914 at the higher rates then in

force, to-wit One Dollar and Twenty-five Cents ($1.25) net have been as follows, to-wit:

Year 1914:

Gross Earnings	$52,470.45
Gross operating expenses and taxes (exclusive of depreciation)	35,003.99
Net earnings including depreciation	$17,466.46

Year 1915:

Gross earnings	$45,660.53
Gross operating expenses and taxes (exclusive of depreciation)	28,858.14
Net earnings including depreciation	$16,802.39

Year 1916:

Gross earnings	$48,056.20
Gross operating expenses and taxes (exclusive of depreciation)	31,521.61
Net earnings including depreciation	$16,534.59

9 Year 1917:

Gross earnings	$54,430.12
Gross operating expenses and taxes (exclusive of depreciation)	43,005.24
Net earnings including depreciation	$11,424.88

Paragraph Seven.

That from the net earnings including depreciation as shown in each of the years in the preceding paragraph hereof there must be deducted annually for normal depreciation of plaintiff's plant and property used and required in furnishing the supply of gas to the defendant City and the inhabitants thereof, including inadequacy, decay and obsolescence, a sum equal to Ten cents per thousand cubic feet of gas made, or the following sums per annum:

For the year 1914	$4,810.11
" " " 1915	4,158.08
" " " 1916	4,478.33
" " " 1917	5,302.98

Leaving as a net return upon the value of its used and useful property as hereinbefore alleged during that said period of time, the following sums per year:

For the year 1914.....$12,656.35

or interest at the rate of 3.8 per cent annually upon the actual value of plaintiff's property for that year.

For the year 1915..... $12,644.31

or interest at the rate of 3.69 per cent annually upon the actual value of plaintiff's property for that year.

For the year 1916..... $12,656.26

or interest at the rate of 3.44 per cent annually upon the actual value of plaintiff's property for that year.

For the year 1917..... $6,121.90

or interest at the rate of 1.72 per cent annually upon the actual value of plaintiff's property for that year.

10 Paragraph Eight.

That during the past two years the prices of gas, coal, oil, of all metals and all essential materials used and consumed in the manufacture and distribution of gas have increased exceedingly; the price of coke having increased from $5.48 a ton in 1916 to $11.25 a ton in 1918. The cost of oil has increased from .0395 per gallon in 1916 to .07 per gallon in 1918. The cost of coal has increased from $4.32 a ton in 1916 to $6.89 per ton in 1918. Metals and fire brick have increased during that same period more than One Hundred per cent. Labor has increased from Seventeen and one-half cents an hour to Thirty-five cents an hour in 1918. That the net income of this plaintiff during the latter part of the year 1916 and during the year 1917 does not reflect these increased costs of the materials entering into the manufacture and distribution of gas as this plaintiff had certain contracts outstanding and unexpired by reason of which it was able to purchase most of such materials at prices much under the then and now prevailing market prices, and plaintiff's consumers were given the entire benefit of these contracts. That practically all of said contracts have now expired and the plaintiff is compelled to operate its plant with fuel and supplies purchased at the present prevailing prices with the result that the operating income of this plaintiff from the sale of gas without deduction for depreciation has been very materially reduced in 1918 as against the showing made in 1917. That taking the known costs that the plaintiff is required to expend for the materials and labor that goes into the cost of production, and taking the volume of business estimated on the production of last year of its gas plant and property, and using the rate under the existing ordinance passed by the City of Muscatine and hereinbefore referred to, plaintiff states that
11 its entire revenue for the year 1918 from the sale of gas would be the sum of Fifty-one Thousand Dollars ($51,-

(000.00). That its operating expenses will be for this same period, the sum of Firty-four Thousand One Hundred Thirty-five Dollars ($54,135) leaving a net loss from operation of the sum of Three Thousand One Hundred and Thirty-Five Dollars ($3,135). These figures do not take into account or allow anything for depreciation.

Paragraph Eight and One-half.

Plaintiff further shows that it is unable to continue to operate its property and furnish the gas service under the rate so insisted upon and established by the authorities of the City of Muscatine, and it has therefore at this time refused to further furnish such service at said price, but has in fact established as the price to its customers that it must receive for gas, and the service to be furnished during the present continuation of this unusual and abnormal condition, the price and rate of One Dollar and Sixty-five Cents ($1.65) net per thousand cubic feet delivered to the consumer.

Your Petitioner shows that at this rate on the basis of sales as indicated by the business of 1918, the entire revenue for Twelve months would be the sum of Eighty-two Thousand Five Hundred Dollars ($82,000); that the necessary operating expenses and charges for the same period based upon the present actual expenses, costs and charges, would be the sum of Fifty-four Thousand One Hundred Thirty-five Dollars ($54,135), which would leave as a net operating result for said period as near as your Petitioner is able to determine at this time, Twenty-eight Thousand Three Hundred Sixty-Five Dollars ($28,365.00). This sum is without taking into account any amount for depreciation, obsolescence and charges of that character which are absolutely necessary, and a reasonable amount as representing such charge for said period applied to an estimated sales production of 50,000,000 cubic feet, and figured on the basis
12 of Ten Cents ($.10) per thousand cubic feet sold, would be the sum of Five Thousand Dollars ($5000), leaving after deducting and charging off such depreciation, the net sum of Twenty-three Thousand Three Hundred Sixty-five Dollars ($23,365), which said sum would represent an interest at the rate of Six and one-half per cent per annum on the actual value of your plaintiff's property as now constituted. Your Petitioner alleges that it will be impracticable, unjust and illegal to require, under the conditions now existing, your Petitioner to continue to operate its plant and furnish gas service as aforesaid to the citizens and people of Muscatine at a less rate than $1.65 per thousand cubic feet as sold and delivered.

Paragraph Nine.

Plaintiff further shows the Court that the legal rate of interest in the State of Iowa is six per cent (6%) per annum, and the usual, ordinary and going rate of interest in the City of Muscatine and surrounding territory upon loans to Companies of like credit as

this plaintiff, was for several years preceding the year 1914, not less than six per cent (6%) per annum, but that since said date, owing to the vast amount of money used in the war, it has advanced until such money cannot be procured under Nine and Ten per cent; that the usual and going rate of return demanded by the investors in such territory upon preferred stocks of companies of the same business risks and hazards as the plaintiff prior to the year 1916, was not less than eight per cent (8%) per annum, and that at the present time it is practically impossible to market such stocks at all at any rate of interest within the reasonable limits of plaintiff's business.

Plaintiff further shows the Court that it is now paying in excess of six per cent (6%) per annum for all money borrowed by it for the enlargement and extension of its properties during the past five years.

13

Paragraph Ten.

That the plaintiff has outstanding obligations due and to become due and upon which the interest is due and payable, and that unless plaintiff meets its payments of interest as the same shall become due upon its said indebtedness, it will be unable to extend or renew the same, and that plaintiff's property will be seized or a Receiver appointed, thus resulting in an enormous financial loss to this plaintiff and its stockholders.

Paragraph Eleven.

Your plaintiff further shows the Court that the said Ordinance of April 29th, 1914, of the defendant City is and should be held by this Honorable Court to be null and void, and of no force and effect whatsoever as against this plaintiff for the following reasons, to-wit:

(1). Because the said Ordinance, if enforced, would result in the impairment of a valid existing contract between plaintiff and the defendant City under the terms of which the plaintiff is at law guaranteed by the defendant City that it will at no time so reduce plaintiff's gas rates that it will not be permitted to earn a fair rate of return upon the fair and reasonable value of its property actually employed in rendering such gas service, whereas the rate so fixed in said Ordinance of April 29, 1914, will not yield plaintiff a fair return upon the value of its property, and will thus result in a complete and absolute confiscation of its property contrary to the terms of said contract and to the provisions of Section Ten (10) of Article One (1) of the Constitution of the United States.

(2). Because the Ordinance, if enforced, would result in the taking of plaintiff's property for public use without just compensation therefor, for the reason that under the rates fixed therein, it would be obliged to produce and furnish its gas to its consumers

in said City at less than the actual cost to plaintiff of such
14 gas and service, and the value of plaintiff's plant as such would thereby be destroyed, and the use and income thereof taken for public use contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

(3). That the enforcement of the Ordinance would result in the taking of plaintiff's private property without due process of law for all the reasons set forth in this Bill of Complaint, and particularly under the First and Second sub-divisions of this Paragraph contrary to the terms of the Fifth Amendment to the Constitution of the United States.

(4). That the enforcement of said Ordinance would result in denying to plaintiff the equal protection of the laws for all of the reasons set forth in this Bill of Complaint, and particularly under the First and Second sub-divisions of this Paragraph contrary to the terms of Section One (1) of the Fourteenth Amendment to the Constitution of the United States.

Paragraph Twelve.

Your plaintiff further shows the Court that it has several thousand consumers of gas in the City of Muscatine, Iowa, and that the bills of a large portion of such consumers are for a small amount ranging from Fifty Cents to Three Dollars per month, and should Complainants comply with the Terms of said Ordinance of April 29, 1914, and said Ordinance should be by this Court declared to be null and void, it would in practically all cases be impossible for your plaintiff to collect the small sums then due it from the said consumers, for the reason that many of the consumers are transients, many others are judgment proof and in all cases the costs of collection for such small sums would be so great as to render such collection unprofitable and your plaintiff would vir-
15 tually be compelled to lose either through abandonment or cost of collection, the difference between the compensation now charged and the compensation provided for under said ordinance of April 29, 1914.

Paragraph Thirteen.

Your plaintiff further alleges that unless restrained by an Injunctive Writ of this Honorable Court, defendants will enforce the provisions of said illegal and invalid Ordinance by the institution of criminal prosecutions against this plaintiff, its officers and employees, the imposition of manifold grievous fines and penalties against this plaintiff and against its said officers and employees of such aggregate amount as to be unreasonable, unjust and oppressive, and will thus, by a multiplicity of suits, fines and penalties unjustly and unlawfully prevent this plaintiff from charging more than such Ordinance rates for gas furnished its consumers, and against such unjust, wrongful

and oppressive action upon the part of defendants, your plaintiff has no adequate remedy at law.

And for as much as your plaintiff can only have relief in a Court of Equity where matters of this nature are properly recognizable and reviewable, it has filed this bill of Complaint and prays that it be adjudged and decreed by this Honorable Court,

(1). That said Ordinance of April 29, 1914, of defendant City of Muscatine, Iowa, be adjudged and decreed to be null and void and of no force and effect whatsoever upon the grounds and for the reasons charged and alleged in this Bill of Complaint, and upon such other grounds and for such other reasons as may to this Honorable Judge seem just, reasonable and equitable, or as may by this Honorable Court be found to exist.

(2). That a temporary Writ of Injunction be issued pending the trial of this suit according to the course and practice, and out of and under the seal of this Honorable Court according to the Statute
16 . in such case made and provided, strictly enjoining and restraining the said defendants and each of them, and any and all persons whomsoever acting through or under said defendants, or independently of said defendants, from enforcing or attempting to enforce in any manner whatsoever the terms of said Ordinance of April 29, 1914, passed by the City of Muscatine, Iowa, as against your plaintiff or its officers or employees, or from instituting or prosecuting any civil or criminal action or proceeding against your plaintiff or its officers or employees for fines, forfeitures or penalties on account of the refusal of your plaintiff, its officers or employees to abide by the terms of said Ordinance until the final judgment and Decree of this Honorable Judge herein.

(3). That upon the rendition of final judgment and Decree herein, such Writ of Injunction be made permanent and perpetual.

(4). That plaintiff further prays for such other and further relief as the nature and circumstances of this case may require, and as to this Honorable Court may seem meet and proper.

(5). Your plaintiff further prays that your Honorable Court may grant unto your plaintiff a Writ of Subpena of the United States of America issued out of and under the seal of this Honorable Court directed to the City of Muscatine, Iowa, R. S. McNutt, John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel, Sidney Terry and Ralph V. Thompson, defendants, herein, therein and thereby commanding the said City of Muscatine, Iowa, R. S. McNutt, John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel, Sidney Terry and Ralph V. Thompson, defendants, at a certain time and under a certain penalty therein
17 to be named, personally to be and appear before this Honorable Court then and there to answer all and singular (but not under oath, answer under oath being hereby expressly waived) the matters aforesaid, and to stand and abide by and sustain such di-

rection and Decree as to your Honor may seem meet and just in the premises.

MUSCATINE LIGHTING COMPANY,
By LANE & WATERMAN,
E. M. WARNER,
WM. CHAMBERLAIN,
Solicitors.

STATE OF IOWA,
Scott County, ss:

C. N. Chubb being duly sworn, says he is General Manager of the Muscatine Lighting Company, the complainant herein; that he has read the foregoing Bill of Complaint and knows the contents thereof; that the averments therein contained are true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes such averments to be true.

This verification is made by deponent and not by complainant for the reason that complainant is a Corporation.

C. N. CHUBB.

Subscribed and sworn to before me by the said C. N. Chubb this 20th day of July, 1918.

[NOTARIAL SEAL.]

JOE R. LANE,
Notary Public, Scott County, Iowa.

18

EXHIBIT "A."

An Ordinance Fixing the Quality of Illuminating Gas and the Price to be Charged for the Same by Any Corporation, Firm, Partnership, or Person Furnishing the Same to Consumers Within the City of Muscatine, Iowa.

Be it Ordained by the City Council of the City of Muscatine.

Section I.

That any corporation, firm, partnership or person, or its successors or assigns, in supplying gas to the inhabitants of the City of Muscatine, Iowa, shall not charge to exceed One Dollar and Ten Cents ($1.10) per thousand cubic feet; providing, however, that said corporation, firm, partnership or person, may charge not to exceed One Dollar and Twenty Cents ($1.20) per thousand cubic feet of gas used by a consumer who does not pay his bill for said gas by the tenth day of the month succeeding that in which said gas is furnished.

It is further provided that the charge of $1.10 per thousand cubic feet net shall be reduced at the rate of two cents (2¢) per thousand cubic feet each year beginning May 1st, 1915, and continuing for a period of five (5) years, or until the rate is $1.00 per thousand cubic feet net.

Section II.

The gas to be furnished by any corporation, firm, partnership, or person to the inhabitants of the City of Muscatine, shall have an average gross heating value of Five Hundred and Ninety (590) British Thermal Unit*ed* per cubic foot, with an allowable variation of ten per cent (10%) over or under this figure. The test to determine the heating value aforesaid to be made at the Company's works
19 as the gas passes from such works into the distribution system. And that said test must be made whenever required by the City Council and the City shall have the right at any time to inspect and test said gas by a competent inspector appointed by the City.

Section III.

Be it further provided that said corporation, firm, partnership or person shall furnish to its consumers for measuring the gas to be used, proper meters free of charge; and further provided that said corporation, firm, partnership or person shall be authorized to charge to its consumers a minimum monthly charge of fifty cents (50¢) in those cases and instances where the consumer does not use in any one month, more than Fifty cents (50¢) worth of gas computed on the scale of prices hereinbefore mentioned; and said charge of fifty cents (50¢) shall include all meter charges.

Section IV.

It is further provided that in those cases where any consumer desires to close his premises for one month or more that said corporation, firm, partnership or person shall, upon written request from such consumer, remove the gas meter from such premises and reinstall the same upon written application by such consumer, without any charge for such removal or re-installation, and that during the period such meter is thus removed there shall be no minimum monthly charge collected by said company.

Section V.

Any corporation, firm, partnership or person violating any of the provisions of this ordinance, shall, upon conviction thereof, be pun-
20 ished by a fine of not less than Ten Dollars ($10.00) or more than One Hundred Dollars ($100).

Section VI.

This ordinance shall be effective for gas furnished from and after May 1st, 1914.

Section VII.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Passed and approved this 29th day of April, 1914.

HARRY KERN,
Mayor of the City of Muscatine.

Attest:
H. B. CAPLE,
City Recorder.

21

EXHIBIT "B."

An Ordinance Granting to the Citizens' Railway & Light Company, its successors and assigns, the right to construct, operate and maintain, gas, electric light and power works, and to use the streets, alleys and public places for transmitting electricity and gas, and to sell the same for light, heat, fuel and power purposes in the City of Muscatine, Iowa.

Be it ordained by the City Council *to* the City of Muscatine:

Section 1. That there is hereby granted to the Citizens' Railway & Light Company, a corporation, its successors and assigns, (hereinafter called the Company), the right to construct, operate and maintain within the City of Muscatine, Iowa, gas, electric light and power works, together with the right to lay in, along and upon the streets, alleys and public places of said City, mains, pipes, fixtures and feeders; to erect poles, wires and other apparatus necessary to furnish said city and its inhabitants with gas and electric light and power, subject to all rights heretofore granted and subject to all the conditions and restrictions herein contained and to the ordinances of said city and the laws of the state of Iowa, for the period of twenty-five years from and after the adoption of this ordinance.

Section 2. The rights hereby granted are given by said city and accepted by said Company, its successors and assigns, upon the following express conditions:

First. That before said Company shall commence the work of laying any of the mains or pipes, or the erection or construction of any poles, wires, cables, or feeders, authorized under this ordinance, it shall file with the City engineer a written application specifying the streets, alleys, and public places or parts thereof, in which mains or pipes are desired to be placed, or upon which poles are desired to be erected, the size of such pipes and mains and size and height of poles; such application shall be accompanied by a map or plat showing the proposed location of the mains, pipes or poles with reference to the streets and alleys and the surface and lines thereof. If the proposed location, size or height of any such main, pipe or pole,

shall in the opinion of the city council, interfere with the reasonable and proper use and maintenance of any other main, pipe, conduit, sewer, manhole, pole or other structure upon or under the streets, alleys, or public places of said City, or is otherwise unsatisfactory to the City Council, it may order the city engineer to make the necessary and proper changes in such map, plat and specifications and after the approval of the same by the city council, the city engineer shall issue a permit to excavate in the streets and alleys, and to lay, erect and construct such pipes, mains, or poles in accordance with said corrected map, plat and specifications. No such work shall be commenced before the issuance of the permit herein provided for.

Second. In the construction, location, erection or laying of any main, pipe, pole, post or other appurtenance or appliance authorized by this ordinance, no excavation or obstruction shall be unnecessarily made, placed or continued, and any excavation or obstruction made or placed in any street, alley, or public place at any time or for any purpose, by said Company, its successors and assigns, shall be at all times properly guarded; and any brick or other pavement, or side-walk, at any time or for any purpose whatever, taken up or displaced by said Company shall be properly and speedily replaced and put in proper order by it under the supervision of the city engineer. If said Company, its successors and assigns, shall fail or neglect to repair any street, alley or sidewalk damaged by it, after five days' notice so to do, and as required by the city engineer, then the city shall make such repairs at the expense of said Company, its successors and assigns.

Third. Said company, its successors and assigns, shall pay all damages for injuries to the person or property of any person, firm or corporation, as well as to the city of Muscatine, resulting from occasioned by, or growing out of negligence or improper construction in the laying, construction, erection or operation of any such pipe, main, pole, wire or appurtenance, or the maintenance and use of the same, and shall fully indemnify and save harmless the city of Muscatine, from and against all claims, actions or suits at law or in equity, of any kind or nature, resulting from, occasioned by or growing out of the construction, erection or maintenance of the said pipe, mains, poles, wires or appurtenances, or the negligence or omission of said company, its successors and assigns, servants or employes, to properly guard any excavation or obstruction at any time or for whatsoever purpose placed, made or caused, in any street, alley or public place.

Fourth. Said Company, its successors and assigns, shall lay the mains, pipes, poles, fixtures and other apparatus of said Company, in and along the streets, avenues and alleys of said city as they now are, or may be at the time the same are laid and constructed, and as herein provided; and whenever any of said streets, avenues and alleys, along and upon which said mains, pipes, poles or other fixtures are laid or constructed, shall have been brought to grade by the

city, said company, its successors and assigns shall remove and replace the same at its expense and shall do so within a reasonable time, to be fixed by the city council. And the council shall have the right, whenever it orders any of the streets to be paved, to compel said company, its successors and assigns, to take up worn-out or decayed and leaky gas mains, pipes feeders and poles, and to replace the same with new and substantial mains, pipes, feeders and poles. All poles used, erected or constructed by said company, its successors and assigns, within said city, shall be kept neatly painted as may be directed by the city council, and shall be branded with the initials of the owner thereof.

Fifth. Said Company, its successors and assigns, hereby agrees to furnish said city, for the term of five years, from and after the adoption of this ordinance, and the said city hereby agrees and undertakes to take and pay for the same, as hereinafter set out,—fifty alternating current arc street lights, of 2,000 nominal candle power, each consuming 480 watts or more of current at the lamp terminals, to be furnished by said company, its successors and assigns, and of such kind or design as the city council may require to be kept burning from one-half hour after sunset until
23 one-half hour before sunrise, each and every night. The said arc lights shall all be placed and included in as compact a district as is reasonably possible, under the direction of the city council; the said district to comprise and include the prominent business and residence streets of the city of Muscatine, not remote from the present power plant of said company.

The city of Muscatine agrees to pay for each of said lights the sum of ninety ($90) dollars per year, subject to a pro rata deduction for lights out of defective lights or deficiency in current below the wattage herein fixed—to be paid in equal monthly installments. On the first day of each month the company shall present to the city council a bill, in writing, for light furnished during the preceding month, which bill shall be referred to the city finance committee for corrections or deductions as herein provided, and shall be paid on or before the 25th day of said month.

Sixth. Said Company, its successors and assigns, shall place, maintain and keep in good repair at all times, and at its own expense, and in such place as the city council shall designate, the best automatic, self-registering device or meter of such kind or make as the city council may require; such instrument shall at all times show the number of lamps burning; and the exact number of watts of power on the lines, and register the same; and the wires or leads for the arc light circuit shall pass through or be properly connected with the same.

Seventh. Said Company, its successors and assigns, shall accept, hold and use this franchise subject to the right of the city to make all rules and regulations it may deem proper as to the erection and location of poles, mains, wires and other appliances, and the insulation and installation of electric light and power wires and service

pipes. The city also reserves the right to make such public improvements as it may deem necessary over, along under and across streets, alleys and other public places upon which the mains, pipes, poles and wires of said company, its successors and assigns, are or may be constructed and erected.

Eighth. That any consumer of gas within said city, either for fuel or lighting purposes, shall not be charged to exceed one and 25-100 ($1.25) dollars, per thousand cubic feet of gas, including all meter charges; provided that said company, its successors and assigns, may charge not to exceed one and 50-100 ($1.50) dollars, per thousand cubic feet of gas, to any consumer not paying his bill for gas at the office of said company, its successors or assigns, in the city of Muscatine, by the tenth day of the month succeeding that in which said gas is furnished; also provided that the minimum charge for gas furnished to any consumer in any one month, shall be fifty cents, which last mentioned amount, the said company, its successors and assigns, are authorized to charge and collect in each case where any consumer does not use, in any one month, more than fifty cents worth of gas computed on the scale of prices hereinbefore mentioned; and said charge of fifty cents shall include all meter charge..

Ninth. That any consumer of electricity within said city, either for illuminating or power purposes, shall not be charged to exceed the following rates; including all meter charges:

24 To any consumer using 35,000 watts or less per month, 15 cents per 1,000 watts.

To any consumer using more than 35,000 watts and less than 150,000 watts per month 12½ cents per 1,000 watts.

To any consumer using more than 150,000 watts and less than 300,000 watts per month 10 cents per 1,000 watts.

To any consumer using more than 300,000 watts and less than 800,000 watts per month 8 cents per 1,000 watts.

Provided that said company, its successors and assigns, may charge not to exceed 20 per cent additional to the rates hereinbefore mentioned, to any consumer not paying his bill for electric light or power, at the office of said company, its successors and assigns, in the city of Muscatine, by the tenth day of the month succeeding that in which said electric light or power is furnished; also provided that the minimum charge for electric light or power furnished to any consumer, in any one month, shall be seventy-five cents, which last mentioned amount the said company, its successors and assigns, are authorized to charge and collect in each case where any consumer does not use in any one month, more than seventy-five cents worth of electric light or power, computed at the scale of prices hereinbefore mentioned; and said charge of seventy-five cents shall include all meter charges.

Section 3. That in consideration of the expenditures to be incurred by said company, its successors and assigns, the city council

shall pass all ordinances, penal or otherwise, that in the opinion of said council may be necessary to carry out the provisions of this ordinance and to protect the rights of the said company, its successors and assigns.

Section 4. That said company, its successors and assigns, shall furnish to said city, free of all charge, gas and electric light to the value of five hundred ($500.00) dollars, per annum, according to the rates hereinbefore mentioned. For gas or electric light used by said city in excess of said amount of five hundred ($500.00) dollars, in any one years, the city shall pay said company, its successors and assigns, not to exceed the rates hereinbefore mentioned.

Section 5. That this franchise and all the rights and privileges conferred hereby on said company, its successors and assigns, are granted upon the further express condition that said company, its successors and assigns, shall in all things and at all times strictly carry out and comply with all the terms, conditions, stipulations and restrictions of a certain other ordinance, entitled—"An ordinance granting to the Citizens' Railway & Light Company, its successors and assigns, the right to construct, operate and maintain an electric railway in and upon the streets, avenues and public places of the city of Muscatine, Iowa, and also granting to the Citizens' Railway & Light Company, its successors and assigns, the right to permit the Davenport and Suburban Railway Company to operate its cars over certain tracks belonging to the first named company, and also granting to the Davenport and Suburban Railway Company the right to operate its cars over certain tracks belonging to the Citizens' Railway & Light Company," otherwise this ordinance to be null, void and of no effect.

25 Section 6. That an ordinance, entitled "An ordinance granting unto Christian Winter and Seevers & Seevers, of Oskaloosa, Iowa, their successors and assigns, the right to construct, operate and maintain in and upon the streets of the city of Muscatine, gas, electric light and power works, also the right to erect poles, wires and other apparatus required and necessary for the operation and maintenance of gas, arc, and incandescent light, heat and power; also all other privileges needed and necessary for the construction, operation and maintenance of the same." adopted by said city on the 6th day of October, 1892, and contained in the Revised Ordinances of said city of the year 1899, at page 316 thereof, and an ordinance entitled—"An ordinance granting unto Christian Winter and Seevers & Seevers of Oskaloosa, Iowa, their successors and assigns, the right to construct, operate and maintain an electric railway in and upon the streets, avenues, and alleys of the city of Muscatine, Iowa, and to erect power houses, poles, and wires for the operation of the same," adopted by said city on the sixth day of October, 1892, and contained in the Revised Ordinances of the said city of the year 1899, at page 321 thereof, and all the rights, privileges and immunities therein granted or conferred, be and the same are hereby repealed.

Section 7. That said company, for itself, its successors and assigns, shall, within ten days from the final adoption of this ordinance, file a written and unconditional acceptance of the same with the city recorder of said city and its failure so to do, shall work a forfeiture of all the rights, privileges and franchises herein granted, and any failure of said company, its successors and assigns, to keep and perform all or any one of the conditions, stipulations and restrictions of this ordinance, shall work a forfeiture of the same.

Passed March 17, 1904.

Approved March 17, 1904.

R. S. McNUTT,
Mayor.

Attest:

H. C. SHOEMAKER,
City Recorder.

26 And thereafter to-wit: On the 28th day of June A. D. 1919 there was filed in said cause an Amended and Substituted Answer which is in words and figures as follows to-wit:

October Term, 1918.

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE, IOWA; R. S. McNUTT, Mayor of said City of Muscatine, Iowa; John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel and Sidney Terry, Members of the City Council of said City of Muscatine, Iowa, and Ralph U. Thompson, City Attorney of the City of Muscatine, Iowa, Defendants.

Amended and Substituted Answer.

Filed June 28, 1919, Wm. C. McArthur, Clerk, by Lura Parker, Deputy.

Comes now the City of Muscatine, Iowa, R. S. McNutt, Mayor of said City of Muscatine, Iowa, and Ralph U. Thompson, City Attorney of the City of Muscatine, Iowa, being the only defendants served with notice of this suit, and in compliance with the request of the court files this their amended and substituted answer in two counts, and for answer to the bill of complaint herein filed by the plaintiff, respectfully represents and states:

Count One.

Paragraph One.

27 The defendants admit that the City of Muscatine, Iowa, is a municipal corporation and acting under a special charter, and that its administrative, legislative and executive powers are

vested in its city council, consisting of a mayor and eight aldermen. Defendants further admit that the officers of said defendant city, as named in plaintiff's complaint, are the duly qualified and acting officials of said City of Muscatine, Iowa, and that said officials are charged with the duty of adopting the ordinances of said City of Muscatine, Iowa.

Paragraph Two.

Defendants admit the passage of the ordinance referred to in plaintiff's petition as Exhibit "A", but allege that said ordinance was as an amendment to the Franchise Ordinance, referred to in Plaintiff's petition as Exhibit "B" and at the express instance and request of plaintiff, and that both parties have acted under it since the date of its passage.

Paragraph Three.

Admit that on the 17th day of March, 1904, that the City Council of the defendant city adopted the franchise ordinance attached to plaintiff's petition as Exhibit "B" to own, construct, operate and maintain a gas plant and distributing system in the defendant city, under terms and conditions specified therein, and that said franchise ordinance and the written acceptance thereof became a lawful contract in writing by and between the said city of Muscatine, Iowa, and the said Citizens Railway & Light Company, its successors and assigns, and that the same now constitutes such a lawful contract by and between the City of Muscatine and your plaintiff, except insofar as it is modified by the agreement made on April 29, 1914, as is alleged in Count Two of plaintiff's complaint, but defendants deny that under and by virtue of the terms of this contract and the laws of the State of Iowa and the United States at the time of the execution of said contract and at the present time, the plaintiff is entitled to charge such rates for gas sold by it, except those provided for in said
28 lawful contract, as amended on the 29th day of March, 1914, and as is provided for in plaintiff's Exhibit "A."

Paragraph Four.

Defendants admit that the plaintiff has maintained a gas plant in the City of Muscatine, Iowa, but deny that the fair value of the used and useful property necessarily employed in complying with the terms and conditions of said franchise contract is Three Hundred Fifty Thousand ($350,000.00) Dollars.

Paragraph Five.

Defendants admit that on the 29th day of April, 1914, at the instance and request of this plaintiff, the defendant city, acting through its legally constituted authorities, passed a certain ordinance, being attached to plaintiff's petition as Exhibit "A", a copy of which is hereto attached, marked Exhibit "5", and by this reference made a

part hereof, and admit that the plaintiff has in every respect complied with the terms and conditions set forth in said Exhibit "5" since the date of its adoption and passage.

Paragraph Six.

The defendants aver that under the terms and conditions of said contract, (Plaintiff's Exhibit B) and the amendment thereto, (Plaintiff's Exhibit "A") that the plaintiff is not guaranteed any sum or sums as gross earnings, except such as may be earned under the rates fixed in the amended franchise contract, and as is fixed in Plaintiff's Exhibit "A".

Paragraph Seven.

In answer to paragraph seven of plaintiff's petition the defendants aver that under the terms of said contract franchise, and the amendment thereto as adopted by the parties hereto on the 29th day of April, 1914, no provision is made therein which would insure the said plaintiff against loss, or is any provision made in said contract
29 and amendment thereto which insures the plaintiff any net income, except such as is made under and by virtue of the rates fixed as a condition for said grant.

Paragraph Eight.

In answer to Paragraph Eight of plaintiff's Bill of Complaint the defendants aver that at the time the agents of plaintiff drafted said franchise contract, they neglected and failed to make provision therein, and as a condition thereof, an increased rate for the gas sold by it, in the event of an increase in its necessary materials, or any other unfor-seen or unexpected contingency which might arise in the future.

Paragraph Eight and One-half.

In answer to Paragraph 8½ of plaintiff's complaint, the defendants deny that the plaintiff's refused to furnish gas at the rate provided for in said contract; deny that plaintiff established any rate except that provided for in said contract, and aver that the plaintiff at all times since the making of said contract, recognized the rates therein fixed as the contract rate, and never charged a rate in excess thereof until permitted so to do under the order of this court.

Paragraph Nine.

In answer to Paragraph Nine of Plaintiff's Bill of Complaint the defendants admit that the legal rate of interest in Iowa is 6 per cent, but aver that no provision, or conditions are provided for in said franchise contract relative to the rate of interest to be paid by plaintiff in the event of it being compelled to borrow money.

Paragraph Ten.

The defendants in answer to Paragraph Ten of plaintiff's Bill of Complaint aver that there was no conditions annexed to the franchise contract, or provision made therein whereby the said plaintiff or its stock holders would be insured against financial
30 loss upon its acceptance of said contract and the operation of the gas plant as therein mentioned, except only insofar as the rates therein provided.

Paragraph Eleven.

In answer to Paragraph Eleven of plaintiff's complaint the defendants deny that the Ordinance of April 29th, 1914, should be held void by this Honorable Court, or any other Federal Court, as against the complaint for the reason that said Ordinance is an amendment to the franchise contract of date March 17th, 1904, and became a part of the franchise contract of date March 17th, 1904, by the acceptance and consent of plaintiff, and is a legal contract in writing between the Complainant and the defendant city as alleged in Paragraph Three of plaintiff's Bill of Complaint.

Defendants deny all the allegations contained in Sub-Divisions (1), (2), (3) and (4) of Paragraph Eleven of plaintiff's Bill of Complaint.

Paragraph Twelve.

Defendants, in answer to Paragraph Twelve of plaintiff's petition, admit that said plaintiff has several thousand consumers in the City of Muscatine, Iowa, but deny each and every other allegation therein contained.

Paragraph Thirteen.

Defendants deny all the allegations contained in Paragraph Thirteen of plaintiff's Bill of Complaint.

Paragraph Fourteen.

By way of affirmative defense the defendants herein respectfully represents and shows the court that prior to the 17th day of December 1903, and prior to the date of entering into the contract referred to in Paragraph Three of plaintiff's Bill of Complaint, being re-
31 ferred to therein as "Exhibit B", the said Citizens Railway and Light Company maintained and operated a gas and electric light plant in the City of Muscatine, Iowa, and prior to entering into the contract aforesaid, the said Citizens Railway & Light Company had a contract with this defendant city for the lighting of all of the streets, alleys, public places and buildings in said city, and was the only company so operating in said city, but, on the said 17th day of December 1903, this defendant advertised for bids for the lighting of its streets, and awarded a contract for the lighting of certain outlying

streets, which were lighted by gas and gasoline lamps, to the Cleveland Vapor Light Company, a competitor of this plaintiff, and, thereafter, to-wit: on the 17th day of March, 1904, the city council of the defendant city entered into contract with the Citizens Railway & Light Company, plaintiff's assignor, for the lighting of certain other streets in the city, which were lighted with electric arc lamps, and which said contract was embodied and contained in the franchise contract of date March 17th, 1904, and set out therein as Section 5, the contents thereof being fully set out in plaintiff's Exhibit "B".

That the street lighting contracts with these companies expired at the same time, on or about the month of March, 1914.

On the 31st day of March 1914 both companies presented to the City Council their respective contracts for the lighting of the streets, for renewal, fixing therein, their own terms and conditions, and the city council took the same under consideration.

During these negotiations the city council obtained information causing them to believe that the Muscatine Lighting Company was discriminating between its consumers in said city, and that the rates being charged under their franchise contract, plaintiff's Exhibit B, for gas consumed, was unreasonable, excessive and exhorbitant,
32 and on the 18th day of December, 1913, adopted an ordinance, under and by virtue of its additional power, granted unto it by Section 725 of the Code of Iowa, to regulate the rates to be charged for gas consumed by its citizens, fixing the rate therein at $1.00 per thousand cubic feet, a copy of which ordinance is hereto attached, marked Exhibit "1", and by this reference made a part hereof.

On the 24th day of January, 1914, the plaintiff herein instituted an action against the city, in the District Court of Iowa, in and for Muscatine County, asking that the city be restrained from the enforcement of said rates. During all of this time the two companies were making every effort to secure their respective contract for the lighting of the streets. The Muscatine Lighting Company desired the contract for lighting the streets of the entire city, to the exclusion of the Cleveland Vapor Light Company. The members of the City Council were making an effort to secure the best terms obtainable, and were exacting certain conditions from the Muscatine Lighting Company as a consideration for the contract.

On the afternoon of April 23rd, 1914, at the instance and request of the officers and agents of the plaintiff, an informal meeting of the aldermen was called at the place of business of the Mayor, for the purpose of meeting with the agents of plaintiff in an effort to effect a settlement of the litigation aforesaid, and to come to some understanding as to the terms and conditions which would be acceptable to the city for the contract for lighting the streets of the city. The agents of the plaintiff appeared at this meeting, bringing with them a written contract for the lighting of the streets, an ordinance relative to the rates to be charged for electricity, and an ordinance fixing the rate to be charged for gas. At this meeting an
33 understanding was reached and a settlement agreed upon, and a meeting of the council was called for that night, (April 23rd.) upon the request of the plaintiff, for the purpose of

carrying out the agreement made. In compliance with this common understanding a special meeting was held on the night of April 23rd, and the city council proceeded to carry out their part of the contract, by authorizing the Mayor and Recorder to sign the contract, giving plaintiff the right to light all the streets, and by adopting the two ordinances on two readings. The plaintiff was requested to reduce its proposition to writing, which was done and presented to the city council at a special meeting called on the night of April 29th, 1914, for the purpose of consummating the deal as agreed upon. Agents of plaintiff were present at both of these meetings.

The written proposal of plaintiff, a copy of which is hereto attached, marked Exhibit 2 and by this reference made a part hereof, sets forth clearly the agreement as made by the parties. On the night of April 29th, the city council approved the action of the Mayor and Recorder in signing the street lighting contract, and adopted on their third and final reading the ordinance fixing the rate to be charged for gas, as mentioned in said proposal, a copy of which is hereto attached, marked Exhibit 5 and by this reference made a part hereof; it also adopted on its third and final reading the ordinance fixing the rate to be charged for electricity referred to in said proposal, a copy of which is hereto attached, marked Exhibit 3 and by this reference made a part hereof, approved the action of the mayor and recorder in signing the contract for the lighting of the streets, which is referred to in said written proposal, a copy of which is hereto attached, marked Exhibit 4, and by this reference made a part hereof. That the agreement as reached on the afternoon of April 23rd, 1914, was fully and completely
34 carried out by the city council in strict compliance with the terms thereof as set forth in the said written proposal, (defendants Exhibit 2), the cause of action above referred to was dismissed by the Muscatine Lighting Company, and the contract fully consummated between the parties, and has been fully complied with in all its terms and conditions by both parties ever since, until the commencement of this action on the part of complainant.

That Defendant's Exhibits 2, 3, 4 and 5 were all written and prepared by the plaintiff herein, and were represented by *it* as being elements entering into one transaction, and relying upon these representations the defendant carried out all the conditions as set forth in said written proposal.

That all of said instruments constitute one legal, binding contract and both parties are bound thereby.

Count Two.

For further answer to Plaintiff's Bill of Complaint, the defendants state.

Paragraph One.

Defendants admit Paragraph One of Plaintiff's petition. Admit that the persons named in said complainants' bill of complaint are

the duly elected, qualified and acting officers and officials of the said City of Muscatine, Iowa.

Defendants aver that the City of Muscatine, Iowa, is a municipal corporation organized, existing and acting by virtue of a Special Charter granted unto said city by the Legislature of the State of Iowa.

Paragraph Two.

Defendants admit Paragraph One (1) of plaintiff's Bill of Complaint.

35

Paragraph Three.

Defendants admit that part of Paragraph Two (2) of plaintiff's Bill of Complaint commencing with the word "This" in the first line thereof and ending with the word "repealed" in the ninth (9) line thereof, but deny that the amount involved in this controversy, exclusive of interest and costs exceeds the sum of Three Thousand Dollars ($3,000.00), and deny that the determination of this controversy involves the construction of the provisions of the Constitution of the United States, or either of them, to-wit:

(1) Those prohibiting the passage of a law by a State impairing the obligation of a contract, to-wit: Section 10, Article One of the Constitution;

(2) Those prohibiting the taking of private property without due process of law; to-wit: The *Fifty* Amendment to the Constitution;

(3) Those guaranteeing to all citizens of the United States equal protection of the law, to-wit: Section One of the Fourteenth Amendment to the Constitution of the United States;

(4) Those which provide that no State shall deprive any person of life, liberty or property without due process of law, to-wit: Section One of said Fourteenth Amendment to the Constitution of the United States.

Paragraph Four.

The defendants admit that the city of Muscatine, Iowa, did on the 17th day of March, 1904, enter into contract with the plaintiff's assignor, whereby the said company was granted the right under certain terms and conditions which were annexed to said Franchise Contract as a consideration, to use the streets of the city for the placing therein poles, wires, and pipes, and for the further

36 purpose of operating and maintaining in said city a gas and electric light plant for the manufacture and sale of gas and electricity to the city and its inhabitants for a period of twenty-five years, as alleged in plaintiff's bill of complaint commencing with the word "On" in the first line of Paragraph Three (3), and end-

ing with the word "Company" in the Fifteenth (15) line, on page 4, Paragraph Three (3) of said Bill of Complaint.

Defendants deny that under and by virtue of the terms of said contract and the laws of the State of Iowa and the United States at the time of the execution of said cantract or at the present time, the plaintiff is entitled to charge such rates for gas sold by it to its consumers in said city, as will enable it to pay therefrom aperating expenses and taxes, or any other sum or sums, except that rate as is provided for in the contract of said plaintiff with the city of Muscatine, Iowa, as amended by the parties on the 29th day of April, 1914, and as is hereinafter more specifically recited.

The defendants deny all of Paragraph Four (4) of Plaintiff's Bill of Complaint; deny that the present fair value of the used and useful property necessarily employed by Plaintiff in complying with the terms of its said contract is in excess of Three Hundred Fifty Thousand ($350,000.00) Dollars.

Paragraph Five.

The defendants deny all of paragraph Five (5) of plaintiff's bill of complaint, and aver the facts to be; That on and prior to the year 1913 the city of Muscatine, Iowa, was under contract with the plaintiff herein for the lighting certain streets of the city with electric arc lamps; that during this same period of time the said city also had and was under contract with another utility company
37 for the lighting of certain outlying streets with gas and gasoline lamps, this lat-er company being known as the Cleveland Vapor Light Company. That the Muscatine Lighting Company and the Cleveland Light Company were competitors in the field of street lighting in the City of Muscatine, Iowa.

That the contracts with these two companies in respect to the street lighting expired at the same time, to-wit:—on or about the month of March, 1914.

That on the 31st day of March, 1914, the Muscatine Lighting Company, this plaintiff, and the Cleveland Vapor Light Company presented their respective contracts to the City Council of the defendant city for renewal, both of said companies having prepared their respective contracts, fixing therein their own terms and conditions as considerations for the grant, and same were thereupon submitted to the city council of this defendant for their consideration.

The controversy between these two companies in competing for this valuable grant had extended for over a year and had become quite spirited, and during this time it came to the knowledge of the city council that the Muscatine Lighting Company who had been supplying the gas to the Cleveland Company, that said Cleveland Company, and certain citizens of Muscatine, Iowa, were receiving gas from the said plaintiff herein at a rate not to exceed 90 cents per one thousand cubic feet consumed.

Being credibly informed and believing that the said plaintiff was discriminating between its consumers in said city and that the rate then being charged the consumers of said city under its contract of date March 17th, 1904, to-wit: $1.35 per One Thousand cubic

feet was unreasonable, exhorbitant and excessive for the consumer, that City Council of said City, attempted and did on the 18th day of December, 1913, adopt an ordinance, under and by virtue
38 of its additional powers granted unto it by Section 725 of the Code of Iowa, to regulate rates, fixing in said ordinance a rate to be charged by the Muscatine Lighting Company at $1.00 per Thousand Cubic Feet of gas consumed, which said Ordinance is attached hereto, marked "Exhibit 1" and by this reference made a part of this answer.

That on or about the 24th day of January, 1914, the Muscatine Lighting Company instituted in the District Court of Iowa, and equitable action against the City of Muscatine asking that the city be restrained from the enforcement of said rates as fixed in said Exhibit 1.

That during all of this time the said Muscatine Lighting Company and the said Clevêland Vapor Light Company were making efforts to procure from the city the contract for the lighting of the streets of said city of Muscatine. The Muscatine Lighting Company desired the contract for the lighting of all of the streets of said city to the exclusion of the said Cleveland Vapor Light Company, and, the Cleveland Vapor Light Company desired simply the renewal of its contract at a much reduced price per lamp. The City Council during all of this time were bending every effort to procure the best contract obtainable, and were exacting certain conditions from the Muscatine Lighting Company for the contract and as consideration for the same.

On the 23rd day of April, 1914, the officers and agents of the Muscatine Lighting Company appeared in the City of Muscatine and requested the Mayor of said City to call the aldermen of said city together for the purpose of a conference in an effort to settle the litigation aforesaid, and to talk over the terms and conditions which would be acceptable to the city for the granting of the contract to their company for the lighting of the city streets to the exclusion of the said Cleveland Vapor Light Company. This request was
39 granted and the city officials and the authorized officers and agents of said Muscatine Lighting Company met at the place of business of the Mayor of the City on the evening of April 23rd, 1914.

That the officials of said Lighting Company had with them at the time of said meeting certain instruments which had been previously prepared by them, to-wit: A contract for the lighting of the public streets and places of the city of Muscatine, a copy of which is hereto attached, marked "Exhibit 4" and which is by this reference made a part hereof; A certain Ordinance fixing the rate to be charged for electric energy, a copy of which is herto attached *hereto*, marked "Exhibit 3" and by this reference made a part hereof, and a certain ordinance fixing a maximum rate to be charged for gas, a copy of which is hereto attached, marked "Exhibit 5" and by this reference made a part hereof.

The foregoing instruments were all written and prepared by the officials of the Muscatine Lighting Company without the knowledge or solicitation of the City of Muscatine or its officers, and were voluntarily presented to the said city officials on the evening aforesaid,

At this meeting it was finally agreed by and between the city officials and the authorized agents of the Muscatine Lighting Company, upon the oral statements of the company officials that the Lighting Company would give the gas rate, as fixed in said ordinance (Exhibit 5), with other conditions there agreed upon as a consideration to the city for the contract to light the entire city street system. It was also agreed that the city council should meet that night, April 23rd, 1914, in Special Session, and should enter into contract for the lighting of the streets, and should pass the ordinance on two readings, which special meeting was called and the
40 contract signed and the ordinances adopted as agreed upon. It was also agreed that the officials of the plaintiff Company should present at the next meeting of the council their proposition, as agreed upon, in writing.

The City Council of the defendant City met again in special session on the night of April 29th, 1914, for the special purpose of carrying out its agreement which had been orally entered into at the office of the Mayor on the evening of April 23rd, 1914, and to approve the act of the Mayor and City Recorder in signing the street Lighting Contract, and to pass the ordinances, Exhibits 3 and 5 on their third and final readings.

At this special session the officials of the Plaintiff appeared and presen ed to the city council a written proposal as had been agreed upon, which written proposal, by copy, is attached hereto, marked "Exhibit 2" and by this reference made a part of this answer. That the written proposal contained the various matters which had been agreed upon at the meeting on the evening of April 23rd, 1914, and is a memorandum of the oral contract then and there duly entered into. The agents of said company represented to the city officials that this new rate as fixed in Exhibit 5 was given as a considera ion for the contract to light *to* streets, and that five years would soon pass and the citizens would then enjoy the benefits of $1.00 gas and at the same time avoid the aggravation, cost and expense of litigation resulting from the suit which was then pending in the District Court, hereinabove mentioned.

That on the night of April 29th, 1914, the City Council of this defendant city approved the act of the Mayor and City Recorder in signing the Lighting Contract, and adopted the ordinances on their third and final reading, and in fact carried out their part of the oral agreement strictly in accordance with the terms as set forth in the written proposal, Exhibit 2 hereof.
41 Defendants aver that the agreement when fully consummated constituted a legal, valid, binding and sacred contract between the City of Muscatine, Iowa, the plaintiff herein, and should not be treated as a scrap of paper by either of the parties hereto.

That Exhibits 2, 3, 4, and 5 hereof, are simply elements which enter into the contract which was finally and fully consummated, and became an executory contract on the night of April 29th, 1914.

That thereafter the said parties to said contract proceeded to carry out the terms and conditions thereof and have continued to do so, without complaint, until this action was commenced by the plaintiff asking a court of equity to step in and set aside the same.

The plaintiff has received from the city from time to time, during the four years past, all the benefits coming to it as the fruits of said contract, as well as all the benefits accruing to it from said contract. Said plaintiff has at no time tendered back to the city the contract for the lighting of the city streets, but still continue to receive their benefits therefrom.

Paragraph Six.

The defendants deny all the allegations contained in Paragraph Six of Plaintiff's Complaint, and aver that the plaintiff has failed and neglected to give the maximum contracted rate, and their earnings therefrom credit for the receipts from the sale of coke, tar, am-onium sulphate and other derivatives, and aver that said earnings are based solely upon the receipts from the sale of gas, and gas alone, and further answering the defendants aver that the said plaintiff is not entitled to any earning, except that which it might
42 receive upon the schedule of rates as fixed in the contract which was entered into with the defendant city on the 29th day of April, 1914.

Paragraph Seven.

Defendants deny all of Paragraph Seven (7) of plaintiff's bill of complaint, and deny that the said plaintiff is entitled as a matter of law, to earn a sufficient sum of money to enable it to pay its operating expenses, including maintenance and taxes, to provide a reasonable depreciation, and to yield to it a fair return upon the value of the property used and useful in its business; deny that the plaintiff is, as a matter of law, entitled to any compensation or return whatsoever other than that fixed in the Franchise Contract made and entered into between the parties hereto on the 29th day of April, 1914, and as is more fully set forth in defendants' Exhibits 2, 3, 4, and 5 which are hereto attached.

Paragraph Eight.

Defendants deny all of Paragraph Eight (8) of plaintiff's bill of complaint, and aver that all of said allegations are immaterial, irrelevant; that the said plaintiff's officers and agents as prudent business men should have, and are presumed to have anticipated the future at the time of entering into the binding contract with the City of Muscatine, Iowa, on the said 29th day of April, 1914, and if it now appears that the said officials used poor judgment in respect to reading the future at the time of entering into said legal, binding contract on the said 29th day of April, 1914, that they are now bound by said contract and the rate therein fixed and are not entitled to any relief at the hand of the Honorable Court.

Paragraph Eight and One-half.

43 Defendants deny all of the allegations contained in Paragraph Eight and One Half (8½) of plaintiff's petition; deny that it would be impracticable, unjust and illegal to require the plaintiff, under the conditions now existing to operate its plant and to furnish gas service to the people of Muscatine at a rate less than $1.65 per thousand feet as sold and delivered; deny that the said plaintiff is entitled to any earning other than that based upon the contracted maximum rate as fixed in the schedule in the contract which was entered into between the plaintiff and the city of Muscatine, on April 29th, 1914. Defendants aver that the city of Muscatine, Iowa, has at all times lived up to all the terms and conditions as is provided in said contract; that it has at all times promptly paid unto the plaintiff any and all sums of money due it under said contract, and has faithfully and promptly carried out and fulfilled each and every condition on its part as mentioned in the written proposal, plaintiff's Exhibit 2.

That the said plaintiff has during the four years past received said considerations from the city and are at this time receiving the same from the city of Muscatine, Iowa. That the plaintiff having during the last four years received the greater benefit from its contract, in good faith made with this defendant, desires now to rob the city of the real consideration which had been promised to the city for the benefit of its citizens, to-wit, One ($1.00) Dollar Gas, which the city officials were assured would be received by the city for its people at the end of the five year period following the making of said contract on the said 29th day of April, 1914. That it was this promise which had induced the city officials to grant unto the said plaintiff the street lighting contract, and they were induced by the said statements that the city would enjoy the benefits of $1.00 gas in five years, and thereupon gave the said plaintiff the contract as hereinbefore recited.

44 That the plaintiff herein is not acting in good faith with the City of Muscatine, Iowa, or with this Honorable Court, and have not come into this court with clean hands.

Paragraph Nine.

The defendants deny all the allegations contained in Paragraphs Nine (9), Ten (10) and Eleven (11), of plaintiff's petition.

Paragraph Ten.

Defendants admit that the plaintiff has several thousand consumers in the city of Muscatine, but deny all the other allegations in Paragraph Twelve (12) of Plaintiff's petition contained.

Paragraph Eleven.

Defendants deny all the allegations contained in Paragraph Thirteen (13) of plaintiff's petition, as well as all the allegations of Sub-divisions 1, 2, 3, 4 and 5, thereof; deny that said plaintiff is entitled to any relief whatsoever at the hands of this court of equity or any other Federal Court; deny that this court has jurisdiction to interfere or intermeddle in the contractual affairs of the City of Muscatine, Iowa, between it and this plaintiff.

Paragraph Twelve.

Further answering these defendants aver that the plaintiff having entered into the contract with this defendant city on the 29th day of April, 1914, in good faith, upon representations which induced the city officials to grant them the valuable contract to light the streets of the city of Muscatine, Iowa, and that said plaintiff having acted upon said contract; having treated the same as a contract; having accepted all the benefits accruing unto it for four long years, are now forever estopped from denying the rate as fixed in
45 Plaintiff- "Exhibit 5" as one of the conditions extended to said city of Muscatine, Iowa, as part of the consideration for the granting of the Street Lighting Contract, a copy of which is hereto attached as Exhibit 4.

Wherefore, defendants pray that the court refuse to grant unto the plaintiff the relief prayed for in its petition, for the reasons herein stated, and they further pray that said plaintiff may have no other or further relief from this Honorable Court, and that the bill of complaint be dismissed, and judgment be entered against complainant, and that the defendants may go hence with their cost.

CITY OF MUSCATINE, IOWA,
ROBERT S. McNUTT,
Mayor, and
RALPH U. THOMPSON,
City Attorney of Said City of Muscatine, Iowa,
(Sgd.) By RALPH U. THOMPSON,
City Attorney.
HOFFMAN & HOFFMAN,
P. O. 215 *Iowa Ave., Muscatine, Iowa.*
HERBERT G. THOMPSON,
P. O. 110 *East 2nd Street, Muscatine, Iowa.*

STATE OF IOWA,
Muscatine County, ss:

I, Ralph U. Thompson, first being duly sworn upon oath depose and say that I am the City Attorney of the City of Muscatine, Iowa, and one of the defendants named in the above entitled cause; that I have read the above and foregoing amended and substituted

answer and know the contents thereof, and that the statements therein contained are true as I verily believe.

(Sgd.) RALPH U. THOMPSON.

Subscribed in my presence and sworn to before me by Ralph U. Thompson this 27th day of June, A. D. 1919.

[SEAL.] HERBERT G. THOMPSON,
Notary Public in and for Muscatine County, Iowa.

46

(Copy.)

EXHIBIT 1.

Gas Ordinance.

An Ordinance Fixing the Standard of Illuminating Power of Gas, and the Price to be Charged for Same, by Any Person, Firm or Corporation Furnishing Gas to the Consumer Within the City of Muscatine, Iowa.

Be it ordained by the City Council of the City of Muscatine:

Section 1. That any person, firm or corporation supplying gas to the inhabitants of the city of Muscatine shall not charge to exceed the ($1.00) Dollar per thousand feet therefor, including all meter charges, and no person, firm or corporation chall charge, exact or receive in excess of One ($1.00) Dollar per thousand feet for gas supplied by them to any inhabitant of said city.

Sec. 2. Providing that said person, firm or corporation may charge not to exceed ten (10) per cent additional for one thousand cubic feet over the above named price to any consumer not paying his bill for gas at the office of said person, firm or corporation in said city of Muscatine, by the 10th day of the month succeeding that in which said gas is furnished; also providing that the minimum charge for gas furnished to any one consumer in any one month shall be fifty (50) cents, which last mentioned amount said person, firm or corporation is authorized to charge and collect in each case where any consumer does not use in any one month more than fifty (50) cents' worth of gas, and said charge of Fifty (50) cents shall include all meter charges.

Sec. 3. That the standard of illuminating power of gas for the City of Muscatine shall be twenty-two (22) candle power. The unit and standard of light shall be the volume of light which is produced in a horizontal direction by one standard English candle, burning at the rate of one hundred and twenty (120)
47 grains of sperm per hour.

Sec. 4. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not less than ten dollars ($10), or more than One Hundred ($100) Dollars.

Sec. 5. This ordinance shall be effective from and after the 31st day of December, 1913.

Sec. 6. All ordinances or parts of ordinances in conflict herewith, are hereby repealed.

Passed and approved this 18th day of December, 1913.

C. KOEHLER,
Mayor.

Attest:
H. B. CAPLE,
City Recorder.

48

(Copy.)

EXHIBIT 2.

To the Honorable Mayor and City Council of the City of Muscatine, Iowa.

GENTLEMEN:

Our attention has been called to the certain gas Ordinance entitled:

"An Ordinance fixing the quality of illuminating gas and the price to be charged for same by any corporation, firm partnership or person furnishing the same to consumers within the City of Muscatine, Iowa."

And which was passed on its second reading by the City Council on the 23rd day of April, 1914, also,

That certain electric light ordinance entitled:

"An Ordinance fixing the price to be charged for electrical energy for lighting by the Muscatine Lighting Company, to consumers in the City of Muscatine, Iowa."

passed on its second reading by the Council on the 23rd day of April, 1914;

Also, that the City on April 23rd, 1914, took proper action authorizing acceptance of the certain street lighting proposition submitted by the Muscatine Lighting Company to the City Council for consideration.

In consideration of the passing of these three matters by the City Council, and on condition that said ordinances are finally passed and the contract as proposed is entered into for the lighting of the streets, the Muscatine Lighting Company in addition to the granting and giving to the City of Muscatin, free of all charge, gas and electric light to the value of Five Hundred ($500.00) Dollars per annum as provided in section four (4) of an ordinance granting to the Citizens' Railway and Light Company, its successors and assigns, the right to construct, operate and maintain gas, electric light, and power plants, and to use the streets, alleys and public places for the transmitting of same as passed March 17th, 1904, further agree to dismiss a certain suit now pending between the company and the

City of Muscatine, wherein a temporary injunction has been
49 granted and as a part of said agreement the company shall reimburse the City for all court costs, and attorneys' fees and all costs of publication relating to dollar gas ordinance and the gas case, in connection with such litigation.

The Muscatine Lighting Company further agrees to enter into a suitable arrangement with the City so as to provide pole space on their poles for the attaching of fire-alarm and police-call wires. The understanding being, that such installation shall be so arranged as not to in any manner interfere with the uses by the company of its poles for its own services.

The Muscatine Lighting Company further agrees to furnish to the City free of charge, three series Tungsten lamps in Weed Park during the Park season. To be placed as designated by the City.

The Company further agrees that arrangements will be made at once with the City whereby transfers will be issued to the passengers to and from the local cars in the City of Muscatine and the present interurban cars operating between Davenport and Muscatine. Such transfers to be, issued under appropriate rules and regulations as to limitation of time and place as may be provided by the Company.

The Company further agrees that the monthly minimum bill in the electric lighting ordinance shall be reduced from seventy-five cents ($.75) to fifty cents ($.50).

The above conditions demanded by the City of Muscatine are agreed to with the understanding that the ordinances referred to will be passed upon their third and final reading, in every respect the same as when approved by your honorable body on the 23rd day of April, 1914, with the exception of the reduction in the minimum charge for electric light from seventy-five cents ($.75) to
50 fifty cents ($.50) and as otherwise amended by insertion of "gross" in gas ordinance, section 2, and the proper execution of the City Street Lighting Contract.

Witness our hand and seal this 29th day of April, 1914.

MUSCATINE LIGHTING COMPANY,
By H. C. BLACKWELL.

51

(Copy.)

EXHIBIT 3.

An Ordinance Fixing the Price to be Charged for Electrical Energy for Lighting by the Muscatine Lighting Company to Consumers within the City of Muscatine, Iowa.

Be it ordained by the City Council of the City of Muscatine:

Section I.

That, the Muscatine Lighting Company, in supplying electrical energy for lighting to the inhabitants of the City of Muscatine shall charge each consumer for electrical energy at the rate of thirteen and one-half (13½) cents per kilowatt-hour for any and all electri-

cal energy consumed up to and including the first forty hours use per month of his connected load or its equivalent, and seven (7) cents per kilowatt-hour for all electrical energy used in such month in excess thereof. Provided, that the Company shall on all bills paid at the Company's office before the tenth of the month following that month in which the electrical energy was used, allow a discount of one (1) cent per kilowatt-hour on the above rates.

Section II.

It is further provided that said Muscatine Lighting Company shall furnish to its consumers for measuring the electrical energy to be used, proper meters free of charge, and further provided that said Muscatine Lighting Company shall be authorized to charge to its consumers a minimum monthly charge of Fifty cents (50¢) in those cases and instances where the amount of electrical energy used by such consumer, at the rate above established, amounts to less than Fifty cents (50¢) in any one month or part of a month. And further provided that each meter shall be considered as a customer hereunder.

It is further provided that in those cases where any consumer desires to close his premises for one month or more, that said Muscatine Lighting Company shall, upon written request from such consumer, remove the electric meter from such premises and reinstall the same upon written application by such consumer, without any charge for such removal or re-installation, and that during the period such meter is thus removed there shall be no minimum monthly charge collected by said Company.

52

Section III.

The rates and charges herein provided shall become effective and in force covering the electrical energy furnished by the Muscatine Lighting Company to its consumers from and after the reading of its meters in April, 1914.

Section IV.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Passed and approved this 29th day of April, 1914.

(Signed) HARRY KERN.
Mayor of the City of Muscatine.

Attest:

H. P. CAPLE,
City Recorder.

53

(Copy.)

EXHIBIT 4.

Contract for Street Lighting.

This contract, in duplicate, made and entered into this 28th day of April, 1914, by and between the Muscatine Lighting Company, Muscatine, Iowa, a corporation, party of the first part, hereinafter called the Company, and the City of Muscatine, Iowa, party of the second part, hereinafter called the City; Witnesseth:

Paragraph I.

That the Company, its successors or assigns, for a period of ten years, hereby agrees to furnish the City fifty (50) four ampere series luminous magnetite arc lamps, to be located as designated by the City, and four hundred and thirty-two (432) series tungsten lamps commonly known as lamps of eighty candle power, to be located as designated by the City. All of the above mentioned street lamps to be operated on what is known as the "All night, Every Night" lighting schedule. The lamps to be lighted every night, one-half hour after sunset, and extinguished every morning, one hour before sunrise, throughout each of the ten years for which this contract provides.

Paragraph II.

That the Company agrees to maintain and keep in good repair at all times, a recording ampere meter of approved type in order to show the amperage on the arc light circuit and to the time of lighting and extinguishing said arc lights. The location of such ampere meter to be designated by the City Engineer. Deductions for lights out on said arc light circuit shall be based upon the records of this ampere meter. Should outrages occur on street lamps, deductions shall be made for all lamp outrages except due to causes beyond the control of the Company at the rate of one and six-tenths (\$.016) per hour for each hour that a four ampere luminous
54 magnetite arc lamp is not furnishing service, and six-tenths of one cent (\$.006) per hour for each hour that a series tungsten lamp is not furnishing service. The City is to use every reasonable effort to see that the Company is notified of any outrages that might occur.

Paragraph III.

The City agrees to pay for the above mentioned service for each four ampere luminous magnetite arc lamp the sum of Sixty-five Dollars (\$65.00) per lamp per year, and for each series tungsten lamp the sum of Twenty-four Dollars (\$24.00) per lamp per year. Payments for above mentioned service to be made to the Company

monthly as soon as practical after each regular monthly meeting of the City Council after presentation of the monthly lighting bill by the Company.

Paragraph IV.

The City shall have the right to increase the number of lamps from time to time, and the price to be paid for service of such additional lamps as may be required shall be at the same rate and charge as above set out. Any lamp placed in service at any time, under authorization of the city shall continue in service until the expiration of this contract.

Paragraph V.

All street lamps as above provided for shall have their location designated and determined by the City, and should the City decide at any time to change the location of any street lamp or lamps, ample notice shall be given the Company and the expense of such change shall be borne by the City.

Paragraph VI.

This contract for street lights shall continue in effect for a period of ten years, beginning with the date that street lighting service here provided for is put into operation and the company
55 agrees to use every effort to complete the installation of all street lamps at the earliest possible date.

Paragraph VII

That when signed and sealed by each of the parties hereto through their properly authorized officers, this becomes a binding contract between them, it being executed in duplicate.

CITY OF MUSCATINE.
By HARRY KERN,
Mayor.

Attest:
H. B. CAPLE,
City Recorder.

56

(Copy.)

EXHIBIT 5.

An ordinance fixing the quality of illuminating gas and the price to be charged for same by any corporation, firm, partnership, or person furnishing the same to consumers within the city of Muscatine, Iowa.

Be it ordained by the City Council of the City of Muscatine.

Section I.

That any corporation, firm, partnership or person, or its successors or assigns, in supplying gas to the inhabitants of the City of Muscatine, Iowa, shall not charge to exceed One dollar and Ten Cents ($1.10) per thousand cubic feet; providing, however, that said corporation, firm, partnership or person, may charge not to exceed One Dollar and twenty cents ($1.20) per thousand cubic feet of gas used by a consumer who does not pay his bill for said gas by the tenth day of the month succeeding that in which said gas is furnished.

It is further provided that the charge of $1.10 per thousand cubic feet net shall be reduced at the rate of two cents (2¢) per thousand cubic feet each year beginning May 1st, 1915, and continuing for a period of five (5) years, or until the rate is $1.00 per thousand cubic feet net.

Section II.

The gas to be furnished by any corporation, firm, partnership or person to the inhabitants of the City of Muscatine, shall have an average gross heating value of Five Hundred and Ninety (590) British Thermal Units per cubic foot, with an allowable variation of ten per cent (10%) over or under this figure. The test to determine the heating value aforesaid to be made at the Company's works as the gas passes from such works into the distribution system. And that said test must be made whenever required by the City Council and the City shall have the right at any time to inspect and test said gas by a competent inspector appointed by the city.

57

Section III.

Be it further provided that said corporation, firm, partnership or person shall furnish to its consumers for measuring the gas to be used, proper meters, free of charge; and further provided that said corporation, firm, partnership or person shall be authorized to charge to its consumers a minimum monthly charge of fifty cents (50¢) in those cases and instances where the consumer does not use in any one month, more than Fifty cents (50¢) worth of gas computed on the scale of prices hereinbefore mentioned; and said charge of fifty cents (50¢) shall include all meter charges.

Section IV.

It is further provided that in those cases where any consumer desires to close his premises for one month, or more, that said corporation, firm, partnership or person shall, upon written request from such consumer, remove the gas meter from such premises and reinstall the same upon written application by such consumer, without any charge for such removal or re-installation, and that during the period such meter is thus removed there shall be no minimum monthly charge collected by said company.

Section V.

Any corporation, firm, partnership or person violating any of the provisions of this ordinance, shall, upon conviction thereof, be punished by a fine of not less than Ten Dollars ($10) or more than One Hundred Dollars ($100).

Section VI.

This ordinance shall be effective for gas furnished from and after May 1st, 1914.

58

Section VII.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Passed and approved this 29th day of April, 1914.

HARRY KERN,
Mayor of the City of Muscatine.

Attest:

H. B. CAPLE,
City Recorder.

59 MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE et al., Defendants.

Admissions.

It is admitted that Ex. 2 attached to the pleadings in this case is the proposal made by the complainant to the City of Muscatine, and that the exhibit attached to the pleadings is a correct copy thereof.

It is admitted that Ex. No. 1, attached to the pleadings, is a correct copy of Ordinance adopted Dec. 18, 1913, and that said Ordinance was duly adopted by the City Council of Muscatine.

It is admitted that an action was brought in the District Court of Muscatine County, Iowa, by the complainant, to enjoin the enforcement of the aforesaid Ordinance Ex. 1, and that a temporary injunction issued; such proceedings being upon the charge that the rate fixed in the Ordinance Ex. 1, was confiscatory.

It is admitted that the Ordinance, copy of which is attached to the pleadings as Ex. 3, was adopted at the date therein given, and that Ex. 3 is a correct copy.

60 It is admitted that Ex. No. 4 is a street lighting contract of date given therein, and the copy attached to the pleadings is a correct copy thereof.

Ex. 5, attached to the pleadings is a correct copy of the Ordinance adopted at the date therein given, and being the ordinance referred to in the pleadings herein.

The Company admits that it has conformed to, and complied with all the terms of the Ordinance set forth as Ex. 5 ever since the passage and adoption of the same until the institution of this action.

It is agreed that the complainant has operated under Ordinance No. 3 aforesaid from the date of its adoption up to the present time, and is still operating thereunder.

It is agreed that the complainant has been operating under the contract Ex. 4 from the date thereof until the present time.

Testimony.

DAN SULLIVAN.

Q. Where do you live?
A. Muscatine, Iowa.
Q. How long have you lived there?
A. 15 years.
Q. Did you ever hold an official position with the City of Muscatine?
A. Yes, Sir.
Q. What was that position?
A. Alderman from 1912 to 1916.
Q. I will ask you—did you ever study law?
A. Yes, Sir.
Q. Where?
A. Here at the State University, and at the law school Denver University in Colorado.

61 Q. In 1913, I will ask you if you introduced an Ordinance providing for gas to be sold in the City of Muscatine at $1.00 per thousand cubic feet.

Objected to as incompetent and immaterial.

Taken subject to objection.

A. I did.
Q. I now hand you defendant's exhibit No. 2, and will ask you if you ever saw that instrument before?
A. I did.
Q. Where?
A. It was first read and filed in the Council Chamber in Muscatine.
Q. Who had it when you first saw it?
A. The Recorder had it brought there by Mr. Blackwell.
Q. Did you see Mr. Blackwell present that to the City Recorder of Muscatine?
A. Yes, Sir.
Q. What date was that?
A. I think it was the 29th of April, 1914.

Q. Were you a member of the City Council at that time of Muscatine?

A. Yes sir.

Q. I will ask you if you at the time this proposal was presented—if you said anything to the Council and Mr. Blackwell, Supt. of the Muscatine Lighting Company in respect to submitting the various ordinances mentioned in this proposal to the vote of the people?

Objected to, incompetent and immaterial. Taken subject to objection.

A. I did.

62 Q. What if anything did Mr. Blackwell say to the council then in session, in reply to your suggestion?

Objected to as incompetent, immaterial and irrelevant. Contract is the best evidence. Taken subject to objection. Exception.

A. Mr. Blackwell said that in regard to the lighting contract, that it was a contract and not a franchise, and it did not have to be submitted to a vote of the people, and that the electric ordinance and gas ordinance, was also a contract and agreement, and considered so by them.

Move to strike out answer, so much of it as telling in what light Mr. Blackwell considered these Ordinances, as the Ordinances speak for themselves.

(By the Court:) The statement of the witness as to what he construed the ordinance to be, is stricken out as a conclusion of the witness; not binding upon anybody.

Q. You were at the meeting of the City Council on the night of April 23, 1914, were you?

A. Yes, sir.

Q. I will ask you if Mr. H. C. Blackwell was present at that meeting?

A. Yes, sir.

Q. I will ask you if you ever saw Exs. 3, 4, and 5?

A. I did.

Q. Who had Exhibits 3, 4 and 5 when you first saw them?

Objected to as immaterial and irrelevant. Taken subject to objection. Exception.

63 A. The City Recorder had them.

Q. Do you know who presented them to the City Recorder?

Same objection; same rule. Exception.

A. They were presented to the City Recorder by Mr. Blackwell, head of the Lighting Company at that time, drawn by him.

Move to strike out last part of answer as to who drew them, as not responsive.

(By the Court: It may go out.)

Q. I will ask you, do you know upon what night and upon what date Ex. No. 5 and Ex. No. 3 were passed if at all by the City Council upon two readings?

Objected to as immaterial and irrelevant. Taken subject to objection. Exception.

A. The 23rd of April, 1914.
Q. Was Mr. Blackwell present at that meeting?
A. He was.
Q. Upon what date was it that Ex. No. 4 was presented to the City Council for its adoption?

Same objection, immaterial and irrelevant. Overruled. Exception.

A. The 23rd of April.
Q. And was Mr. Blackwell present at that time?
A. Yes, sir.
Q. I will ask you state if you know, whether or not on the night of the 23rd of April, 1914, whether or not the provisions as contained in Ex. No. 2 were presented to the Council in any different form than Ex. 2 is now in?

Objected to as immaterial and irrelevant, and seeking to change a written document.

(By the Court: That is all admitted. I can't see how it can
64 add anything to it.)

Question not answered.

Q. What was said by Mr. Blackwell if anything to this Council at the time of the passage of the Ordinances and execution of this contract in question—street lighting contract, in respect to the time or period that $1.10 gas Ordinance would run.

Objected to as incompetent, immaterial, and seeking to add something to a written document. Sustained. Exception.

65 STATE OF IOWA,
Johnson County, ss:

I, N. E. Hess, being first duly sworn on oath do say that the foregoing testimony was taken by me in shorthand, and duly transcribed by me, and that the same is a true and correct copy of my shorthand notes taken at that time.

(Sgd.) N. E. HESS.

Subscribed and sworn to before me this 16th day of October, 1919.

(Sgd.) C. F. HAMBRECHT,
[SEAL.] *Notary Public, Johnson County, Iowa.*

Endorsed: Filed October 17, 1919. Wm. C. McArthur, Clerk, By Louis J. Adelman, Deputy.

66 And thereafter to wit: On the 15th day of August, A. D. 1919, there was filed in said cause a Decree which is in words and figures as follows to wit:

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE, IOWA, et al., Defendants.

Decree.

And now on this 15th day of August, 1919, in the above entitled case, the parties appearing by counsel, and the pleadings herein being presented and duly considered.

It is ordered and adjudged, that this case be set down for hearing upon Count One of the Answer—the issues presented by said Count of said answer to be first tried and determined before proceeding with any of the other defenses herein.

To this order setting the case for trial upon said separate issue, the plaintiff and defendants except. The plaintiff requests the court to try the entire case—to appoint a Master and proceed to the determination of all of the issues in the case. This request is denied, and the plaintiff excepts.

And now on this 15th day of August, 1919, this case coming on for hearing upon the issue raised by the First Count of the answer under the foregoing order, the Court proceeds to the trial thereof, and by consent of parties, the evidence heretofore introduced in
67 this case is to be considered in the determination of the issues presented by the first count of the answer aforesaid. And the case being now fully tried and submitted, and the court being now fully advised finds:

That the rates complained of by the plaintiff, were in fact fixed by contract of the parties, as alleged in said Count One of said answer, and that said rates are valid and binding upon the plaintiff, regardless of the claim in the plaintiff's petition that the same are confiscatory, and that in view of such contract rates, the facts stated in the Bill of Complaint and amendments thereto, entitle the plaintiff to no relief; such rates being fixed by a contract binding upon the plaintiff and that for this reason the plaintiff is not entitled to any relief herein, and its Bill of Complaint is dismissed. The plaintiff excepts.

The plaintiff makes oral request that the temporary injunction heretofore granted, be continued, or that additional order of injunction be issued, to be effective pending the appeal in this case, and is given leave to file written application in support of such request, and the temporary injunction and bond are continued until further orders herein. The court reserving jurisdiction and power to make such further orders, and reserving full power upon final hearing, to make such orders as may be necessary to carry out any order of distribution of funds if the same becomes necessary under ruling of the Appellate Court.

(Sgd.) MARTIN J. WADE,
Judge.

Filed August 15, 1919. Wm. C. McArthur, Clerk.

68 And thereafter to wit: On the 19th day of Sept., 1919, there was filed in said cause a Petition for Appeal and order allowing same, which are in words and figures as follows, to wit:

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE, IOWA; R. S. MCNUTT, Mayor of said City of Muscatine, Iowa; John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel and Sidney Terry, Members of the City Council of said City of Muscatine, Iowa, and Ralph U. Thompson, City Attorney of the City of Muscatine, Iowa, Defendants.

Petition for Appeal.

To the Hon. Martin J. Wade, District Judge:

The above named Muscatine Lighting Company, feeling aggrieved by the Decree rendered and entered in the above entitled cause upon the Fifteenth day of August, A. D. 1919, does hereby appeal from said Decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said Decree was based, duly authenticated be sent to the Supreme Court of the United States sitting at the Capitol in the City of Washington, D. C., under the rules of such Court in such cases made and provided.

69 And your Petitioner further prays that the proper order relating to the required security to be required of him be made.

MUSCATINE LIGHTING COMPANY.
By JOE R. LANE,
W. M. WARNER,
WM. CHAMBERLAIN,
Its Solicitors.

Appeal allowed upon filing bond to be approved by the court or clerk in sum of $500.00.

Witness my hand this 13th day of September, 1919.

(Sgd.) MARTIN J. WADE,
Judge.

Filed Sept. 19, 1919. Wm. C. McArthur, Clerk, By Louis J. Adelman, Deputy.

70 And thereafter to wit: On the same day, September 19th, 1919, there was filed in said cause an Assignment of Errors which is in words and figures as follows to wit:

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE, IOWA; R. S. McNUTT, Mayor of Said City of Muscatine, Iowa; John A. Vetter, William F. Hathaway, William H. Graff, William Cochran, Joe B. Miller, H. F. Meyers, John S. Nietzel and Sidney Terry, Members of the City Council of said City of Muscatine, Iowa, and Ralph U. Thompson, City Attorney of the City of Muscatine, Iowa, Defendants.

Assignment of Errors.

Filed September 19, 1919. Wm. C. McArthur, Clerk, By Louis J. Adelman, Deputy.

Now at the time of filing its Petition for Appeal in the above entitled action, the complainant files the following Assignment of Errors and says that the Decree entered in the above cause on the Fifteenth day of August, 1919, is erroneous and unjust to the complainant and violates the principles of equity in this:

71

I.

Because the District Court of the United States in and for the Southern District of Iowa, Davenport Division, being the trial court, declined and refuses to hear the evidence in the case upon all allegations of the Bill of Complaint, and split the plaintiff's cause of action, trying only the issue raised by the first Count of defendant's Answer, viz:

The question of whether the Ordinance of the City of Muscatine of date April 29th, 1914, was in fact and in law a contract between the said City of Muscatine and the plaintiff Company; thus rendering it impossible for complainant to present its evidence, as to the merits of the entire controversy and have the same incorporated as a part of the record of this case upon its appeal.

II.

Because the trial court in splitting plaintiff's cause of action and hearing only the issue presented by the first Count of defendant's Answer required this plaintiff in order to have the merits of its case passed upon to try another action between it and the defendants when the whole case should have been heard and determined in a single action.

III.

Because the trial court erred in holding that the Rate Ordinance of the City of Muscatine, Iowa, passed under date of April 29th, 1914, and being Exhibit "A" of plaintiff's petition, did under the facts as shown in evidence constitute a contract between the City of

Muscatine and the complainant, under which the complainant obligated itself to supply gas within said city during the unexpired term of its franchise at the price therein fixed for the reason that under the undisputed evidence in the record, the said Ordinance was purely a Legislative Enactment of the City of Muscatine
72 passed pursuant to the rate making power delegated to it under the Statutes of the State of Iowa, and particularly under Section 725 of the Code of Iowa 1897 as amended and was applicable generally within said City to all persons or corporations selling gas therein and carried penalty for its violation and was not accepted and was not in any respect contractual by the complainant Company.

IV.

Because the City of Muscatine at the time of the passage of the Rate Ordinance of date April 29th, 1914, being Exhibit "A" Plaintiff's Bill was forbidden by Statute, to-wit, Section 725 of the Code of Iowa 1897 as amended to bind itself by a contract fixing any definite rate for any particular time.

V.

Because there is no testimony whatever to support the contention of the defendant and the finding of the Court that the said Rate Ordinance passed under date of April 29, 1914, being Exhibit "A" attached to plaintiff's Bill constituted a contract but on the contrary the testimony conclusively shows that the said Ordinance was adopted by the City of Muscatine as an Ordinance fixing complainant's rates of charge by law and not by contract and was so understood by this complainant and by the City at the time of its passage and adoption.

VI.

Because the written proposal of the complainant Company under date of April 29, 1914, which is Exhibit "2" attached to defendant's amended and substituted Answer, clearly sets forth in express terms the proposal made by the Complainant Company, and the acceptance of such proposal by the defendant City and the said complainant Company was not bound beyond the terms thereof.
That under said proposal and the acceptance thereof, there is
73 to be found no agreement whatever upon the part of the complainant that said Rate Ordinance should be considered in any other manner than as a Legislative Act of the City, which it would be the duty of the City to amend or repeal at any time that conditions had so changed as to render the rate named therein confiscatory.

VII.

Because under the Statutes of the State of Iowa, to-wit, Section 725 of the Code of Iowa 1897, the defendant City at the time of the

passage of said Ordinance had not and has not now power or authority to fix the rates of charge of the complainant Company by contract but on the contrary had been delegated and did possess and does now possess full and complete power to fix such rates by Legislative Act and its action in the fixing of the complainant's rates by said Rate Ordinance must be held to have been pursuant to and in the exercise of the legislative power expressly conferred upon it under the Statutes of the State of Iowa.

VIII.

Because the Complainant and the City of Muscatine, Iowa, defendant, were forbidden by the Statutes of the State of Iowa, to-wit: Section 725 Code of Iowa 1897, as amended, from entering into any contract binding upon them fixing specifically rates for any definite time.

MUSCATINE LIGHTING COMPANY.
By JOE R. LANE,
E. M. WARNER,
WM. CHAMBERLAIN,
Its Solicitors.

74 And thereafter to-wit: On the same day September 19th, 1919, there was filed in said cause Bond on Appeal which is in words and figures as follows to-wit:

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE et al., Defendants.

Bond on Appeal.

Approved and Filed September 19, 1919. Wm. C. McArthur, Clerk,
By Louis J. Adelman, Deputy.

Know all men by these presents: That we, Muscatine Lighting Company, a corporation as principal, and Tri-City Railway & Light Company, a corporation as surety, are held and firmly bound unto the City of Muscatine, Iowa, the Mayor and Aldermen, and persons named as defendants in the above entitled cause in the sum of Five Hundred Dollars ($500.00) lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made we bind ourselves and each of us jointly and severally by these presents.

Sealed with our seals and dated this 15th day of September, 1919.

75 Whereas the above named Muscatine Lighting Company has prosecuted a Writ of Error to the Supreme Court of the United States to reverse the Judgment of the District Court for the

Southern District of Iowa, Davenport Division in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the above named Muscatine Lighting Company shall prosecute its said appeal to effect and answer all costs if it failed to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

MUSCATINE LIGHTING COMPANY,
By JOE R. LANE,
Its Attorney.
TRI-CITY RAILWAY & LIGHT COMPANY,
By B. J. DENMAN,
President.

STATE OF IOWA,
County of Scott, ss:

On this Fifteenth day of September, 1919, personally appeared before me B. J. Denman to me known to be the person executing the foregoing instrument as an officer of the Tri-City Railway & Light Company, and acknowledged the execution of the same to be the free act and deed of said Company by him as its officer for the purposes therein set forth, and the said B. J. Denman being duly sworn did further say that the said Company, Tri-City Railway & Light Company is a corporation and has property in this jurisdiction in the State of Iowa of more than Ten Thousand Dollars ($10,000.00) over and above its just debts and legal liabilities and property exempt from execution.

B. J. DENMAN.

76 Subscribed and sworn to before me this 15th day of September, A. D. 1919.

JOE R. LANE,
Notary Public, Scott County, Iowa.

The within Bond is approved both as to sufficiency and form this 19th day of September, 1919.

WM. C. McARTHUR,
Clerk,
By LOUIS J. ADELMAN,
Deputy.

77 And thereafter to-wit: On the 6th day of October A. D. 1919 there was filed in said cause Præcipe for Transcript which is in words and figures as follows to-wit:

MUSCATINE LIGHTING COMPANY, Plaintiff,

vs.

CITY OF MUSCATINE, Defendants.

Præcipe for Transcript of the Record in Appeal to United States Supreme Court.

Filed October 6, 1919. Wm. C. McArthur, Clerk, by Louis J. Adelman, Deputy.

To the Clerk of said Court:

The plaintiff, Muscatine Lighting Company, has perfected its appeal to the Supreme Court of the United States from the Decree entered in said cause on the Fifteenth day of August, 1919, and the plaintiff does now request and direct that you prepare a transcript of the record proceedings and documents upon which said Decree was based, duly authenticated and file the same with the Clerk of the Supreme Court of the United States sitting at the Capitol in the City of Washington, D. C.

That there shall be incorporated into the transcript of the said record on such appeal the following portions of the record, viz:

78 (*a*). Bill of Complaint of Muscatine Lighting Company, plaintiff.

(*b*). Amended and Substituted Answer of defendants.

(*c*). Each and all of the certain admissions made of record before the Honorable M. J. Wade at the time of the hearing of said cause.

(*d*). The testimony of the witness, Dan Sullivan, introduced at said hearing.

(*e*). Order of the Court under date of August, 1918, (as shown in Final Decree of Court) ordering said cause to be first tried upon Count One of the Answer.

(*f*). Final Decree of the Court entered under date of August 15th, 1919.

(*g*). Petition of plaintiff for appeal to the Supreme Court of the United States, and allowance thereof by the Court.

(*h*). Bond on appeal filed and approval thereof.

(*i*). Assignment of Errors.

(j). Citation on defendants to appear in said appeal to the Supreme Court of the United States issued under date of September 20, 1919, and service thereof.

LANE & WATERMAN,
E. M. WARNER,
WM. CHAMBERLAIN,
Attorneys for Muscatine Lighting Co.,
Plaintiff and Appellant.

Service of the above Præcipe is hereby accepted, and the receipt of a copy thereof is hereby acknowledged this 3d day of October, A. D. 1919.

RALPH U. THOMPSON,
Attorneys for Defendants and Appellees.
HERBERT G. THOMPSON,
HOFFMAN AND HOFFMAN.

79 UNITED STATES OF AMERICA,
Southern District of Iowa, ss:

I, Wm. C. McArthur, Clerk of the District Court of the United States for the Southern District of Iowa, hereby certify the foregoing — pages to contain a full, true and complete transcript of the record of the case of Muscatine Lighting Company, Complainant, vs. City of Muscatine, Iowa, et al., No. 4020—Equity, Davenport Division, as called for by the præcipe for transcript filed in said cause October 6th 1919; as full, true and complete as the originals thereof on file and of record in office in the City of Davenport in said District. I further certify that I transmit herewith as part of said transcript the original Citation with acceptance of service thereof by attorneys for defendants.

In witness whereof I hereunto set my hand and affix the seal of said Court at office in the City of Davenport in said District this 17th day of October A. D. 1919.

[Seal U. S. District Court for the District of Iowa.]

WM. C. McARTHUR,
Clerk of said Court,
By —— ——.

Endorsed on cover: File No. 27,333. S. Iowa D. C. U. S. Term No. 578. Muscatine Lighting Company, appellant, vs. City of Muscatine, Iowa, et al. Filed October 20th, 1919. File No. 27,333.